

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC. : Civil Action No.
vs. : 3:09CV620
LAWSON SOFTWARE, INC. : January 4, 2011

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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P R O C E E D I N G S

THE CLERK: Civil action number 3:09CV00620, ePlus, Incorporated versus Lawson Software, Incorporated. Mr. Scott L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. Michael G. Strapp, and Mr. David Young represent the plaintiff.

Mr. Daniel W. McDonald, Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent the defendant. Are counsel ready to proceed?

MR. ROBERTSON: Yes, Your Honor, plaintiff is.

MR. McDONALD: Yes, Your Honor. Thank you.

THE COURT: All right. Good morning, ladies and gentlemen. On behalf of the Court and counsel and the parties, I'd like to thank you for your participation this morning in one of the most important civic duties that citizens of our country have.

We are a society which has chosen to rule itself in accord with the rule of law, and we have taken in our Constitution and our laws measures to make sure that we have an effective legal system by which people can resolve their disputes in court rather than in the streets, and if we did not have the service of jurors to make the sacrifices that jurors are called upon to do so, then our system of justice that is administered in accord with our Constitution and our statutes could not exist.

1 And so what you are called upon to do is a public
2 duty of the highest order which, of course, all of us know
3 entail sacrifices for you and for your families and for your
4 employers and imposes burdens upon you beyond that of the
5 ordinary responsibilities that you have which are already
6 significant, and all of us know that.

7 This case involves a dispute over patents. There
8 are -- the plaintiff here is ePlus, Incorporated, or Inc., and
9 ePlus, whose lawyers are sitting over here, has some patents
10 that are issued by the United States Patent Office, a process
11 that is sanctioned and approved by the Constitution of the
12 country and the laws of the nation, and the patents all are
13 long-numbered.

14 They have six figures, and, in fact, I expect most of
15 us would like to earn incomes in accord with the size of the
16 numbers of these patents, but they are referred to by three
17 small digits, the last three digits of the patent. I don't
18 know that any of you know anything about these patents, but I
19 want to let you know and understand what these patents are.

20 There's a patent number 6023683 which is called the
21 '683 patent. There's patent number 6055516 or the '516 patent.
22 There's patent number 6505172 or the '172 patent. Sometimes,
23 patents may be referred to, instead of using these short
24 numbers, '516 or '683 as the patents-in-suit. That's just a
25 term that lawyers sometimes use to talk about the patents that

1 are the subject of the case, or they may be called the ePlus
2 patents.

3 Now, all three of these patents in this case relate
4 to what is called, and you'll come to learn, as electronic
5 sourcing and procurement software, systems, and methods,
6 software, systems, and methods, all three, and the parties are
7 going to, through the trial, offer testimony to explain what
8 all that is.

9 Now, I'm going to now show for you a -- and you can
10 look up at those big televisions there. You all will be better
11 off looking that way, most of you will, and you'll be better
12 off looking that way -- a CD that sort of explains the patent
13 system and what it is that has given rise to the situation in
14 which we all find ourselves today.

15 Would it help if I turned the lights off back there?
16 I've never really looked at them. It would? All right, turn
17 those lights off, please.

18 How about that; is that better? Now, who is playing
19 the CD for us? All right, would you go ahead.

20 (DVD played for jury.)

21 THE COURT: Mr. Neal, will you please call the roll.

22 THE CLERK: Yes, sir, Your Honor. Ladies and
23 gentlemen of the jury panel, as I call your name, would you
24 please stand, answer present, and then be seated. Sarah
25 Dolphin. I'm sorry. Sarah Abernathy.

1 PROSPECTIVE JUROR: Present.

2 THE CLERK: That's where you live. Sarah Abernathy.

3 PROSPECTIVE JUROR: Present.

4 THE CLERK: John Abrams, John Abrams?

5 (No response.)

6 THE CLERK: John Apostle, II.

7 PROSPECTIVE JUROR: Present.

8 THE CLERK: Charles Asbury.

9 PROSPECTIVE JUROR: Here.

10 THE CLERK: Tiffany Bowles.

11 PROSPECTIVE JUROR: Present.

12 THE CLERK: Joan Boyd.

13 PROSPECTIVE JUROR: Present.

14 THE CLERK: Lisa Briscoe.

15 PROSPECTIVE JUROR: Present.

16 THE CLERK: Constance Campbell.

17 PROSPECTIVE JUROR: Present.

18 THE CLERK: Peggy Carrington.

19 PROSPECTIVE JUROR: Present.

20 THE CLERK: Brenton Carson.

21 PROSPECTIVE JUROR: Present.

22 THE CLERK: Rebecca Carter.

23 PROSPECTIVE JUROR: Present.

24 THE CLERK: Kristin Caufield.

25 PROSPECTIVE JUROR: Present.

1 THE CLERK: Tamara Cebrian.

2 PROSPECTIVE JUROR: Present.

3 THE CLERK: Jason Chalmers.

4 PROSPECTIVE JUROR: Present.

5 THE CLERK: Luther Clary.

6 PROSPECTIVE JUROR: Present.

7 THE CLERK: Lindsey Comer.

8 PROSPECTIVE JUROR: Present.

9 THE CLERK: Richard Compher.

10 PROSPECTIVE JUROR: Present.

11 THE CLERK: Jerry Dawson.

12 PROSPECTIVE JUROR: Present.

13 THE CLERK: Gardner Divers.

14 PROSPECTIVE JUROR: Present.

15 THE CLERK: Ruth Downs.

16 PROSPECTIVE JUROR: Present.

17 THE CLERK: Eric Ellingson.

18 PROSPECTIVE JUROR: Present.

19 THE CLERK: Carrie Emerson.

20 PROSPECTIVE JUROR: Present.

21 THE CLERK: Sandra Gumm.

22 PROSPECTIVE JUROR: Present.

23 THE CLERK: Zelma Hatcher.

24 PROSPECTIVE JUROR: Present.

25 THE CLERK: Kathryn Horne.

1 PROSPECTIVE JUROR: Present.

2 THE CLERK: Kathleen Hribar.

3 PROSPECTIVE JUROR: Present.

4 THE CLERK: Hugh Hutcherson.

5 PROSPECTIVE JUROR: Present.

6 THE CLERK: Danielle Jones.

7 PROSPECTIVE JUROR: Present.

8 THE CLERK: Ronda Jones.

9 PROSPECTIVE JUROR: Present.

10 THE CLERK: Stephanie Jones.

11 PROSPECTIVE JUROR: Present.

12 THE CLERK: Gregory Kiersarsky.

13 PROSPECTIVE JUROR: Present.

14 THE CLERK: Joan Kinzie.

15 PROSPECTIVE JUROR: Present.

16 THE CLERK: Kevin Lewis, Sr.

17 PROSPECTIVE JUROR: Present.

18 THE CLERK: Joyce Marsh.

19 PROSPECTIVE JUROR: Present.

20 THE CLERK: Jon Meyers.

21 PROSPECTIVE JUROR: Present.

22 THE CLERK: Linda Mitchell.

23 PROSPECTIVE JUROR: Present.

24 THE CLERK: Carole Mitchell.

25 PROSPECTIVE JUROR: Present.

1 THE CLERK: Melissa Moore.

2 PROSPECTIVE JUROR: Present.

3 THE CLERK: Debra Mosby. Debra Mosby.

4 (No response.)

5 THE CLERK: John Murgatroyd.

6 PROSPECTIVE JUROR: Present.

7 THE CLERK: Timothy Newton.

8 PROSPECTIVE JUROR: Present.

9 THE CLERK: Karen Ott.

10 PROSPECTIVE JUROR: Present.

11 THE CLERK: Kathy Pearce.

12 PROSPECTIVE JUROR: Present.

13 THE CLERK: Charonda Penn. Charonda Penn.

14 (No response.)

15 THE CLERK: Philip Pollack.

16 PROSPECTIVE JUROR: Present.

17 THE CLERK: Erika Powell.

18 PROSPECTIVE JUROR: Present.

19 THE CLERK: Betty Raymond.

20 PROSPECTIVE JUROR: Present.

21 THE CLERK: Monica Redwood.

22 PROSPECTIVE JUROR: Present.

23 THE CLERK: Desiree Roberts.

24 PROSPECTIVE JUROR: Present.

25 THE CLERK: Flora Robinson.

1 PROSPECTIVE JUROR: Present.

2 THE CLERK: Denise Robinson.

3 PROSPECTIVE JUROR: Present.

4 THE CLERK: Sinden Schoedel.

5 PROSPECTIVE JUROR: Present.

6 THE CLERK: Robin Silberman.

7 PROSPECTIVE JUROR: Present.

8 THE CLERK: Marchelle Sossong.

9 PROSPECTIVE JUROR: Present.

10 THE CLERK: Josephine Strulson.

11 PROSPECTIVE JUROR: Present.

12 THE CLERK: Heather Traylor.

13 PROSPECTIVE JUROR: Present.

14 THE CLERK: Leanne Wight.

15 PROSPECTIVE JUROR: Present.

16 THE CLERK: Are there any jurors present in the
17 courtroom whose name I did not call? Any jurors present in the
18 courtroom whose name I did not call? Thank you.

19 Now, ladies and gentlemen, if you would please stand
20 and raise your right hand, and after the oath is administered,
21 if you'll verbally respond I shall.

22 (Jury panel sworn.)

23 THE CLERK: Thank you. Please be seated.

24 THE COURT: Juror number 60, is your last name Wright
25 or Wight?

1 PROSPECTIVE JUROR: It's Wight.

2 THE COURT: W-i-g-h-t?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Ladies and gentlemen, as you know now,
5 the case is about patent infringement, and someone is said to
6 be infringing on the claims of a patent. Remember the video
7 said the part where the invention is disclosed, the part of the
8 deed of patent that contains the /TPEFS, the elements and the
9 boundaries, are called the claims, and it's the claims that are
10 alleged to be infringed.

11 And so it's said that I am infringing a claim if I,
12 without the permission of the patent owner, import, make, use,
13 offer to sell, or sell the patented invention or product made
14 by a patented process as defined by those claims, and if I do
15 that within the United States, and if I do that while the
16 patent is extant, that is before the patent expires -- you
17 remember the video said most patents go for 20 years. So after
18 20 years, I could go in, and if you have a patent, after
19 20 years, most of the time I can come in and just use your
20 patent and product, and I don't have to pay you a royalty or do
21 anything. I just get the right to use it.

22 All right, now, a patent, as you learned in the
23 video, is presumed to be valid. That presumption of validity,
24 however, can be overcome if it is clearly and convincingly
25 shown that the patent is invalid. The person who is suing for

1 infringement has to prove that infringement has occurred. The
2 person who is accused of infringement -- here, that's the
3 defendant, Lawson -- can also say, I didn't infringe, and they
4 can deny infringement, and then it's up to the party, ePlus,
5 who has the patent to say, yes, you are, and to prove that.

6 But if Lawson can also say, well, that patent is
7 invalid, so even if I'm infringing it, it's no good, you can't
8 sue me, you can't get any really judgment against me. It's up
9 to Lawson to prove clearly and convincingly that the patent is
10 invalid, because it is presumed that the patent is valid.

11 Now, I've told you before about the numbers of the
12 patents. The parties are ePlus, Inc., and Lawson Software,
13 Inc., and ePlus contends that Lawson makes, uses, offers to
14 sell, or sells products and methods that infringe certain
15 claims of certain patents.

16 They allege that claim three, 26, 28, and 29 of '683
17 patent is alleged -- is infringed. They allege that claims
18 one, two, six, nine, 21, 22, and 29 of the '516 patent are
19 infringed, and they allege, ePlus does, that claim one of the
20 '172 patent is infringed.

21 To determine infringement, what you have to do is to
22 compare the accused products and methods, that is Lawson's
23 products and the methods used by Lawson with the claim that
24 that method or product is alleged to infringe. There's -- you
25 don't compare Lawson's products and ePlus's products. You

1 compare the claims against what are called the accused products
2 or methods.

3 In your notebook, there's a list of the terms that
4 are used in the claims. Now, the terms sometimes are not the
5 easiest things to understand, and it has been the job of the
6 Court to determine what those claim terms mean, and I've
7 decided that, and in the notebook of those nine of you who will
8 hear the case is a list of what those claim terms mean, and you
9 are obligated when you get into the jury box to follow what
10 those terms mean, not what you think they mean, but what the
11 Court says they mean.

12 From time to time, some of these witnesses are going
13 to use the same words that the claim terms use, and there are
14 going to be some documents maybe that have those terms in them.
15 It doesn't necessarily mean that the use given by those
16 witnesses or documents is the same that the Court has given the
17 meaning, so you should not assume that a witness or documents
18 use of a word or a phrase that is in the claim term necessarily
19 has the same meaning that the word or phrase within the claim
20 term that the Court has construed.

21 Now, you heard the video talk about boundaries, what
22 is the boundary of the claim. That defines what the owner of
23 the patent has been awarded a patent on. A patent is infringed
24 only if Lawson's products or methods includes each and every
25 element of a claim that is alleged to be infringed. So if, for

1 example, a claim has five elements, let's say, for example, and
2 ePlus proves that four of those elements are exactly covered by
3 the patent but doesn't prove to your satisfaction that the
4 fifth element is covered, then there isn't any infringement,
5 and that's because ePlus has to prove all of the elements of
6 the claim are being infringed, and you have to do that, decide
7 that with respect to each claim for each of the patents.

8 Now, ePlus also contends that Lawson is indirectly
9 infringing these claims by contributing to or inducing third
10 parties to make and use products or methods incorporating the
11 patented inventions. In this case, what that really means is
12 that Lawson is working with its customers, and when they do
13 certain things, they're infringing the patent together.

14 It is the customers that are alleged third parties;
15 isn't that right, Mr. McDonald, in this case? There isn't
16 anybody else.

17 MR. McDONALD: Yes, I believe that's the allegation.

18 THE COURT: So you'll hear evidence about that, too,
19 and I'm going to give you instruction about indirect
20 infringement as well.

21 Now, Lawson, on the other hand, says and denies that
22 its infringing any claim of any of the ePlus patents either
23 directly, that is by itself, or indirectly, that is by what
24 it's doing with its customers, or by what it's telling its
25 customers to do.

1 Lawson also contends that these asserted claims,
2 every one of them, are invalid. You remember the video
3 mentioned invalidity, and they base a claim of invalidity on
4 three basic doctrines which I'm going to explain to you later,
5 but you'll hear the lawyers mention them in their opening
6 statements. There's invalidity on the theory of anticipation.
7 That means -- I'll give you instructions on that later.

8 It's invalid, they say, upon a theory of obviousness,
9 and it's invalid for -- some of the claims are invalid, excuse
10 me, because there's a lack of a written description that is
11 adequate under the patent law.

12 And as that -- I'll give you further instruction on
13 that. But even though the PTO examiner has allowed some of the
14 claims here, it's up to you, the jury, to decide whether or not
15 the patent is invalid for the reasons alleged by Lawson.

16 Now, I don't know whether the lawyers -- I do know,
17 so never mind. There's also -- I'm not going to get into that
18 because I realize yesterday I told them they can't do it.

19 Now, that's sort of a background of where you're
20 going, and it's a hard job that you are being asked to do. Any
21 time you are serving on a jury it's a hard job, and you're
22 going to need to pay attention. The lawyers have worked hard
23 to try to get this case down to a manageable level, and they've
24 been working on it for a good while, and they anticipate that
25 the trial of this case will take approximately three weeks. It

1 maybe a little bit longer, it maybe a little bit less, so
2 they're going to do everything they can consistent with their
3 obligations to represent their clients and their client's
4 interest, which is what the law requires that they do, to
5 present the case efficiently and expeditiously, and I'm going
6 to do the same thing to see that they move things along.

7 Nonetheless, as you can tell from what I've told you,
8 and you'll be able to tell a little bit later for those of you
9 who are selected, it is a fairly complex set of questions that
10 have to be decided by the jury, and it will take some time to
11 hear the evidence and decide it.

12 Now, we're about to begin a process called voir dire
13 examination of the jury, and unlike what you've seen on
14 television, it isn't unduly long, and I hope it's not unduly
15 intrusive. Indeed, I've tried to frame the questions in a way
16 that if you have to give an answer, you can stand, give me your
17 name, and answer the question.

18 I may have some follow-up questions, but there may be
19 questions -- I don't know that there will be. There may be
20 questions which involve personal matters on your part that you
21 would rather not state openly, and that's fine. In that case,
22 you come up here, and you will talk right here at the bench and
23 take your answer there.

24 This examination is important for several reasons.
25 First, there are reasons at law why people can't sit as jurors

1 in a case, and my questions are designed, in part, to find out
2 if there's any reason why any of you could not sit as a juror.
3 For example, if you are related to a witness or to a lawyer or
4 own stock in one of the companies, you can't sit as a juror.
5 The law says you can't, and so my questions are designed to see
6 if there are any of you who not only have those situations but
7 others.

8 In addition to that, in our system of justice, the
9 parties, through their lawyers, have the right to participate
10 in deciding who among your number actually sits in trial and
11 judgment in this case.

12 They do that by having or exercising what are called
13 peremptory challenges. That is to say after we have a certain
14 number of you in the box, which -- and your names are drawn by
15 lot, they can say, I don't want this person, that person, or
16 this person to sit on the jury, and they can do that for a good
17 reason, a bad reason, or no reason at all, which one hopes they
18 don't do, so long as it is not an unconstitutional or unlawful
19 reason.

20 They don't have a lot of these challenges, so it's
21 very important that they have information so that they can use
22 them or not or decide not to use them on the basis of
23 deliberate and careful and meaningful thought, and to that end,
24 they have all been given copies of some extracted information,
25 some of the information you provided in response to your jury

1 questionnaire. They weren't given all of it, but they were
2 given some of it.

3 I know it's been a long time since you lined up in
4 alphabetical order and stood up and said present when your name
5 is called, but there's a reason for that. I've found over the
6 years that the lawyers can more quickly put together the
7 information that they already have about you with your name and
8 your face and the information they learn today from you if you
9 are seated in this order, and that's why I've asked you to do
10 that, because, as I said, they do need to make these challenges
11 intelligently because they don't have very many of them.

12 The first thing I'm going to ask them to do is to
13 stand, to introduce themselves and the lawyers and legal
14 assistants that there at the table with them in the case, who
15 will be here during the case, excuse me, and to introduce their
16 client representatives so that you'll have -- I'll have some
17 questions for you, and we'll start over here with the
18 plaintiff. Mr. Merritt, are you starting? Okay.

19 MR. MERRITT: Yes, sir. Good morning. My name is
20 Craig Merritt. I am with the Christian & Barton law firm here
21 in Richmond, Virginia. Our lead counsel, Scott Robertson,
22 Jennifer Albert, are with the Goodwin Procter law firm in
23 Washington, D.C. We also are going to have with us during the
24 trial Michael Strapp, also with Goodwin Procter, and David
25 Young from Goodwin Procter.

1 Robin Randolph is a legal assistant with my law firm
2 here in Richmond. Ken Farber, who is sitting in the back row
3 here, is a representative who is here from ePlus during the
4 trial.

5 THE COURT: Who is this gentleman that's probably
6 doing most important job in the courtroom? Would you introduce
7 yourself, please.

8 MR. GREER: I'm Mike Greer. I'm with trial practice.

9 THE COURT: All right. Mr. -- who is going to do it
10 over here for you all? All right, Mr. McDonald.

11 MR. McDONALD: My name is Dan McDonald. I'm an
12 attorney from Minnesota. With me is Kirstin Stoll-DeBell.

13 THE COURT: Stand up there so they can see you, Ms.
14 Stoll-Debell.

15 MR. McDONALD: She's from Denver. Representative of
16 Lawson Software, Dale Christopherson; Dabney Carr, counsel here
17 in Richmond, and Will Schultz, and our technology here, Bill
18 Mayleben, and representing Lawson also from time to time is
19 Bruce McPheeters.

20 THE COURT: All right.

21 MR. McDONALD: Maggie Martinez is our paralegal here
22 who you'll see moving around the courtroom.

23 THE COURT: The name of your firm?

24 MR. McDONALD: Merchant & Gould.

25 THE COURT: And it's headquartered in Minneapolis.

1 MR. McDONALD: Correct.

2 THE COURT: And the name of Mr. Carr's firm is
3 Troutman Sanders.

4 MR. CARR: That's right.

5 THE COURT: All right. First question I have, ladies
6 and gentlemen, is whether you, any of you know any of the
7 lawyers or legal assistants or technical people who have been
8 introduced today in the case. In the back there.

9 PROSPECTIVE JUROR: Josephine Strulson.

10 THE COURT: Okay, just a minute. All right, whom do
11 you know, Ms. Strulson?

12 PROSPECTIVE JUROR: I know Mr. Dabney Carr.

13 THE COURT: And how do you know Mr. Carr?

14 PROSPECTIVE JUROR: I work at Troutman Sanders.

15 THE COURT: You do?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Okay. I don't believe I need to ask you
18 any more questions.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: I wish I had known that. We could have
21 excused you earlier.

22 THE CLERK: What number is she, Your Honor?

23 THE COURT: Number 58.

24 THE CLERK: Thank you.

25 THE COURT: Anybody else know any of the lawyers in

1 the case? All right. Now, have I got the total -- there's
2 just one defendant; right, Mr. Carr?

3 MR. CARR: That's right.

4 THE COURT: Has anybody been employed by, in the past
5 or now, or do you have any family who has been employed by, in
6 the past or now, or any close friends -- and when I say close
7 friends in these questions I mean people whom you pay attention
8 to and who influence your judgment -- who have been employed by
9 ePlus, Inc., or by Lawson Software, Inc.? Anybody? No.

10 Is there anybody here who owns stock in or has ever
11 been an officer in or has ever owned stock in ePlus or Lawson,
12 or is there anybody in your family, to your knowledge, who owns
13 stock in either of those corporations? The answer is no.

14 Now, ladies and gentlemen, I want to point out
15 something else. A lot of these questions, like do you know the
16 lawyers, for the most part we know statistically the answer is
17 no, so for the most -- unless somebody stands up and said they
18 do, if everybody just sits and remains silent, it means you are
19 giving a no answer, and we'll record a no answer for you.

20 But there's some questions statistically we know,
21 such as have you been on a jury before, that many of the jurors
22 may very well have been on a jury, and in that instance, what I
23 do is start pointing with my pen down here with juror number
24 one, and I come right across the way, and when I come to you,
25 if the answer for you is yes, you stand up, you give me your

1 name, I have some follow-up. When we finish with you, you can
2 sit down, and then I go right on across here, and I do that
3 each row, and that way we make sure we get everybody.

4 Sometimes we'll get back to the back row, and it will
5 be -- it will happen that somebody in the front row or before
6 then realizes, you know, I should have said in response to that
7 question or even to an earlier question, and if -- that happens
8 all the time because sometimes something somebody else says
9 prompts you to think of something that you ought to have
10 disclosed, and if that happens, you raise your hand.

11 We'll get to you. People are watching. My staff up
12 here is watching, and we'll get to you and get the answer and
13 get it straight. The important thing is that we have the
14 answer.

15 The other thing is, if you don't understand the
16 question, you raise your hand and let me know, because it's
17 probably my fault that I have not put the question correctly,
18 and if you don't understand it, probably somebody else doesn't
19 understand it as well. It is important, as I've told you, that
20 you understand these questions so you can give meaningful
21 answers to them, so you let us know. We're not in so much of a
22 hurry that we don't want to do it right.

23 All right, has anybody or any of your family members
24 or close friends to your knowledge ever been employed by either
25 of the law firms, and the law firms in this case are, in

1 Richmond, Christian & Barton represents ePlus, and Troutman
2 Sanders represents Lawson, and Goodwin Procter is headquartered
3 -- or Mr. Robertson is in Washington, D.C., and Merchant &
4 Gould is in Minneapolis. Has anybody ever been employed by any
5 of those law firms? No, all right. Thank you.

6 Now, I gave all of you when you came in a list of
7 witnesses. Is there anybody -- you've looked at those
8 witnesses -- who believes that you know any of those witnesses?
9 Most of the witnesses are not from this area. Is that a safe
10 statement, counsel?

11 MS. ALBERT: (Indicating affirmatively.)

12 THE COURT: Anybody believe you know any of the
13 witnesses, though? All right. Well, the answer to that is the
14 jurors have had these lists, and they've looked at them, and
15 the answer is, no, nobody knows any of the witnesses.

16 Have any of you served as a juror in a case, whether
17 it's civil or criminal? There are two kinds of cases.
18 Basically a civil case is like this where a patent is involved
19 or contracts, personal injury or property damage. Criminal is
20 where there's an allegation of criminal conduct, and this
21 counts -- this question includes whether you served as a juror
22 in a federal court like this one or a court of any state in
23 this country, or if you've been in the military, whether you've
24 been a member of the court martial board.

25 So starting over here with juror number one, Ms.

1 Abernathy, if you have -- when I point to you, if you've ever
2 been a juror, stand and give me your name, and we'll go from
3 there. Starting there, anybody been a juror? Coming straight
4 down the line all the way across. Yes, ma'am, your name?

5 PROSPECTIVE JUROR: Constance Campbell.

6 THE COURT: Ms. Campbell -- I'll get back to this
7 other lady in a minute. Ms. Campbell, when and where were you
8 a juror?

9 You can sit down over there. Is that Ms. Boyd?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Okay, have a seat. I'll get back to you.

12 PROSPECTIVE JUROR: In Richmond. It was many years
13 ago.

14 THE COURT: It was in the state court?

15 PROSPECTIVE JUROR: Yeah. I think it was Marshall
16 Street.

17 THE COURT: The John Marshall Courts Building. Was
18 it a civil case or a criminal case.

19 PROSPECTIVE JUROR: Criminal.

20 THE COURT: Was there anything about your service as
21 a juror in that case that would keep you from giving a fair
22 trial to the parties in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Thank you. Back there to Ms. Boyd. Ms.
25 Boyd, when and where were you a juror?

1 PROSPECTIVE JUROR: In Brunswick County.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: Criminal.

4 THE COURT: All right. About how long ago was that?

5 PROSPECTIVE JUROR: Maybe last year.

6 THE COURT: All right. Is there anything about your
7 service as a juror, Ms. Boyd, that would give you any
8 difficulty giving these people a fair trial in this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you very much. On down the front
11 row. Yes, ma'am.

12 PROSPECTIVE JUROR: Peggy Carrington.

13 THE COURT: Ms. Carrington, when and where were you a
14 juror?

15 PROSPECTIVE JUROR: Nottoway County.

16 THE COURT: How long ago?

17 PROSPECTIVE JUROR: Many years ago, sir.

18 THE COURT: Is it a criminal or civil case?

19 PROSPECTIVE JUROR: Civil.

20 THE COURT: Is there anything about your service in
21 that case that would keep you from giving a fair trial to the
22 parties in this case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Thank you. On across the front row,
25 anybody been a juror? All the way across, yes, sir. Your

1 name?

2 PROSPECTIVE JUROR: Luther Clary.

3 THE COURT: Mr. Clary, when and where were you a
4 juror, sir?

5 PROSPECTIVE JUROR: Brunswick County.

6 THE COURT: All right, about how long ago was that?

7 PROSPECTIVE JUROR: It's been many years ago.
8 20-plus years probably.

9 THE COURT: Was it civil or criminal?

10 PROSPECTIVE JUROR: Criminal.

11 THE COURT: Was there anything about your service as
12 a juror in that case, Mr. Clary, that would keep you from
13 giving a fair trial to these parties?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Thank you very much. On across the front
16 row. All right, sir.

17 PROSPECTIVE JUROR: Jerry Dawson.

18 THE COURT: Mr. Dawson, when and where were you a
19 juror?

20 PROSPECTIVE JUROR: Howard County, 30 years ago,
21 criminal.

22 THE COURT: Criminal case. Is there anything about
23 that jury service that will keep you from giving a fair trial?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Thank you very much. Second row, over

1 here, anybody on this side? Yes, ma'am, your name?

2 PROSPECTIVE JUROR: Ruth Downs.

3 THE COURT: Ms. Downs, when and where were you a
4 juror?

5 PROSPECTIVE JUROR: Many years ago up in Maryland.

6 THE COURT: All right.

7 PROSPECTIVE JUROR: Civil and criminal.

8 THE COURT: All right. Is there anything about your
9 service in that case that would give you any problems giving a
10 fair trial to these people?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: On across the second row. Yes, ma'am,
13 your name?

14 PROSPECTIVE JUROR: Kathryn Horne.

15 THE COURT: Ms. Horne, when and where were you a
16 juror?

17 PROSPECTIVE JUROR: Petersburg Circuit Court about
18 20 years ago.

19 THE COURT: And was it criminal or --

20 PROSPECTIVE JUROR: It was criminal.

21 THE COURT: Is there anything about your service
22 there that would keep you from giving a fair trial to these
23 parties?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: On down across the second row, anybody on

1 the second row? Okay. Third row, anybody on the third row
2 been a juror? Yes, ma'am, your name?

3 PROSPECTIVE JUROR: Carole Mitchell.

4 THE COURT: Ms. Mitchell, when and where?

5 PROSPECTIVE JUROR: October 2009, Henrico County,
6 criminal.

7 THE COURT: All right. Are you Carole Mitchell?

8 PROSPECTIVE JUROR: Yes, Carole.

9 THE COURT: And it was a criminal case, you say?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Is there anything about your service in
12 that case that would keep you from giving a fair trial to these
13 parties?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: On across here. Yes, sir, your name?

16 PROSPECTIVE JUROR: John Murgatroyd. I have a
17 question just for clarification.

18 THE COURT: Yes, sir.

19 PROSPECTIVE JUROR: You asked about the military
20 service and involvement with the court martial. Is that only
21 as a jury member, sir?

22 THE COURT: Yes.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: If you were the prosecuting attorney or
25 defense attorney or a witness or even the accused, it doesn't

1 make any difference.

2 PROSPECTIVE JUROR: Thank you.

3 THE COURT: All right, on across. Yes, your name.

4 PROSPECTIVE JUROR: Philip Pollack.

5 THE COURT: Mr. Pollack, when and where were you a
6 juror?

7 PROSPECTIVE JUROR: Many years ago, City of Richmond,
8 two criminal and one civil.

9 THE COURT: Is there anything about your service in
10 those cases that would keep you from giving a fair trial to
11 these parties?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you. On across the way. All
14 right. In the back row, anybody in the back row been a juror?
15 Yes, ma'am.

16 PROSPECTIVE JUROR: Marchelle Sossong.

17 THE COURT: When and where, Ms. Sossong, were you a
18 juror?

19 PROSPECTIVE JUROR: About five years ago, Henrico
20 County.

21 THE COURT: Was it civil or criminal?

22 PROSPECTIVE JUROR: Civil.

23 THE COURT: Anything about your service there that
24 would keep you from giving a fair trial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Anybody -- thank you very much. Anybody
2 else? Yes. Okay, yes, sir, your name?

3 PROSPECTIVE JUROR: Kevin Lewis.

4 THE COURT: All right, Mr. Lewis, when and where were
5 you a juror, sir?

6 PROSPECTIVE JUROR: Richmond.

7 THE COURT: About how long ago was it?

8 PROSPECTIVE JUROR: I'm assuming 12 years.

9 THE COURT: Was it civil or criminal?

10 PROSPECTIVE JUROR: Civil.

11 THE COURT: Anything about your service in that case
12 that would keep you from giving a fair trial to the parties in
13 this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Thank you very much. For those of you
16 who said you'd served as members of a civil jury, I know that
17 none of them were patent cases because they were all in the
18 state court, but did they, in any of the civil cases you were
19 involved in, involve intellectual property rights such as the
20 claim that somebody was entrenching on a trade secret or a
21 property, some kind of trade property of any kind? No, all
22 right. Thank you.

23 Now, I'd like to know at this time whether any of you
24 have heard any publicity or any information about this case in
25 the newspapers or even while you were around the courthouse

1 this morning. If the answer is yes, let me know. Otherwise,
2 I'll record a no answer for you. I don't think there's
3 actually been publicity about it. All right, thank you. The
4 answer is no.

5 Have you or a family member or close friend ever been
6 employed by a company which either provides or sells computer
7 software or computer systems? If the answer is yes, let me
8 know. Starting over here as I point on the front row. Yes.

9 PROSPECTIVE JUROR: Sarah Abernathy. My
10 brother-in-law was a -- worked for an internet service
11 provider.

12 THE COURT: And what was the name of it; do you know?

13 PROSPECTIVE JUROR: It's since folded. I don't
14 remember the name of the company.

15 THE COURT: Is there anything about that situation
16 that would keep you from giving a fair trial to these parties?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you, Ms. Abernathy. On across the
19 front row, anybody? Yes, ma'am, your name?

20 PROSPECTIVE JUROR: Rebecca Carter. I work for Wells
21 Fargo trust department, and we have our own proprietary
22 software.

23 THE COURT: All right. Is there anything about that
24 that would keep you from giving a fair trial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you. Anybody on the second row?

2 Let me get to you since you're up. Your name?

3 PROSPECTIVE JUROR: Kristin Caufield.

4 THE COURT: All right, Ms. Caufield.

5 PROSPECTIVE JUROR: My dad works for a government
6 contractor that sells computer software and securities systems.

7 THE COURT: And do you know what it is?

8 PROSPECTIVE JUROR: He currently works for the
9 government.

10 THE COURT: And has that been -- do you know how long
11 it's been?

12 PROSPECTIVE JUROR: For the past four or five years.

13 THE COURT: Before that, do you remember any?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Anything about that situation that would
16 keep you from giving a fair trial to either of these parties?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Back here, was it Ms. Boyd, I believe?

19 PROSPECTIVE JUROR: I had two sisters who worked for
20 IBM.

21 THE COURT: Did they work in the software area?

22 THE WITNESS: One of them did.

23 THE COURT: Is there anything about that situation
24 that would keep you from giving a fair trial to these parties,
25 Ms. Boyd?

1 PROSPECTIVE JUROR: No.

2 THE COURT: All right. Anybody else on that row? In
3 the third row, anybody? Your name.

4 PROSPECTIVE JUROR: Kathleen Hribar.

5 THE COURT: Ms. Hribar, what is it?

6 PROSPECTIVE JUROR: I worked for 12 years for Brimmer
7 Corporation as a home care executive.

8 THE COURT: For what?

9 PROSPECTIVE JUROR: Brimmer Corporation. It's a
10 software vender of health care software.

11 THE COURT: Is there anything with your experience
12 there that would keep you from giving a fair trial?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Did you work with the software part of
15 it, or did you work in some other area?

16 PROSPECTIVE JUROR: I worked with the software and
17 clinicians, physicians and nurses.

18 THE COURT: Did it involve procurement of any kind?

19 PROSPECTIVE JUROR: No.

20 THE COURT: On across the third row, anybody? Okay.
21 Yes, your name?

22 PROSPECTIVE JUROR: Stephanie Jones.

23 THE COURT: Ms. Jones, what connection do you have?

24 PROSPECTIVE JUROR: My father is a computer network
25 analyst. He doesn't actually sell systems, but he does work on

1 them.

2 THE COURT: Okay. Are any of them Lawson systems?

3 PROSPECTIVE JUROR: No.

4 THE COURT: EPlus systems?

5 PROSPECTIVE JUROR: Not that I'm aware of, no.

6 THE COURT: Thank you. Anybody else? Would that
7 keep you from giving a fair trial here?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Thank you. Anybody else? Yes, sir, your
10 name.

11 PROSPECTIVE JUROR: Jon Meyers.

12 THE COURT: Mr. Meyers, what about you?

13 PROSPECTIVE JUROR: I work with a broker/dealer that
14 has proprietary software as well.

15 THE COURT: Do you work with the software?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Do they sell it or produce it?

18 PROSPECTIVE JUROR: It's part of our system.

19 THE COURT: Is there anything about that that would
20 keep you from giving a fair trial?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Okay, on across. Your name?

23 PROSPECTIVE JUROR: John Murgatroyd. I've worked for
24 Basic Commerce & Industries at Dahlgren, Virginia. I support
25 the Department of Navy as a weapons systems engineer, and we

1 have -- we develop software, but we mostly act to inspect
2 software that DOD or a DOD contractor has developed.

3 THE COURT: And does any of that involve procurement
4 or sourcing software?

5 PROSPECTIVE JUROR: Not directly, no. When I was
6 active duty in the military, I was involved, but not --

7 THE COURT: You were involved in what?

8 PROSPECTIVE JUROR: In aiding with procurement.

9 THE COURT: What did you procure?

10 PROSPECTIVE JUROR: Mostly weapons systems and
11 Tomahawk cruise missiles systems.

12 THE COURT: From specialty weapons people?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Did you use Lawson or ePlus software in
15 any way?

16 PROSPECTIVE JUROR: Not that I --

17 THE COURT: Not that you know about, all right.

18 Thank you very much. Yes, over here. That's Ms. Moore, is it?

19 PROSPECTIVE JUROR: Yes. My brother worked dozens of
20 years ago in Silicon Valley designing software, and I don't
21 remember the name of his company. And I also have a good
22 friend who currently works for a company that contracts with
23 the government designing software, but, again, I don't know the
24 name of the company.

25 THE COURT: All right. Is there anything about any

1 of that that would keep you from giving a fair trial?

2 PROSPECTIVE JUROR: No.

3 THE COURT: How about you, Mr. Murgatroyd, anything
4 about your background that would keep you from giving a fair
5 trial?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Over here, yes, ma'am.

8 PROSPECTIVE JUROR: Kathy Pearce. My daughter works
9 for a company and demos software, and she helped install it at
10 one point in her career, SunGard Energy.

11 THE COURT: All right. Anything about that that
12 would keep you from giving a fair trial to these parties?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Anybody else? Yes, sir?

15 PROSPECTIVE JUROR: Philip Pollack.

16 THE COURT: Yes.

17 PROSPECTIVE JUROR: Your Honor, repeat the exact
18 question again, please.

19 THE COURT: Well, the question here, it's gotten a
20 little broader, but it's have you ever worked for a company
21 that provides or sells computer software systems.

22 PROSPECTIVE JUROR: Yes, during college, years ago, I
23 was a summer programmer for IBM.

24 THE COURT: Okay. Anything about that that would
25 keep you from giving a fair trial?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: All right. Thank you. Anybody else?

3 Anybody in the last row? Your name?

4 PROSPECTIVE JUROR: Heather Traylor.

5 THE COURT: Yes, ma'am, okay, got you.

6 PROSPECTIVE JUROR: I work for Graybar Electric, and
7 we contract E-TURN software. We also sell services for
8 e-procurement, and I'm the business development manager in
9 charge of that.

10 THE COURT: Are you familiar with either the Lawson
11 or the ePlus systems?

12 PROSPECTIVE JUROR: Not that I'm aware of.

13 THE COURT: What is the name of the system you used?

14 PROSPECTIVE JUROR: It's called E-TURNS.

15 THE COURT: T-e-r-m?

16 PROSPECTIVE JUROR: T-U-R-N-S.

17 THE COURT: Okay, E-TURNS. My guess is it's my
18 hearing, it's not you.

19 PROSPECTIVE JUROR: No, it's me.

20 THE COURT: Okay. Thank you very much. Anything
21 about that that would keep you from giving a fair trial to
22 these parties?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Anybody else?

25 PROSPECTIVE JUROR: Sinden Schoedel. I work for

1 Northrop Grumman. I don't personally install software, but my
2 company does a great deal of it.

3 THE COURT: I'm sorry, your name is what?

4 PROSPECTIVE JUROR: Sinden Schoedel.

5 THE COURT: Anything about that employment that would
6 keep you from giving a fair trial to these parties?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay. Based upon your answers, I think
9 most of you have already answered this. If you've answered it
10 previously, you don't need to, such as Ms. Traylor, I believe
11 you've already answered this, but is anybody employed by a
12 company which provides or sells electronic procurement or
13 electronic sourcing software systems? And I know you've
14 already answered that, Ms. Traylor.

15 I'm going to start across the front row. If the
16 answer is yes, let me know. Second row, no. Third row, no.
17 Fourth row, we've already gotten the answer back there.

18 Other than Ms. Traylor, is there anybody who has had
19 to use electronic source-ware -- electronic sourcing software
20 systems in connection with your work? If the answer is yes,
21 let me know. Okay, yes, ma'am, your name?

22 PROSPECTIVE JUROR: Rebecca Carter. I uses software
23 that we --

24 THE COURT: You use -- and that's electronic sourcing
25 software, so you go out and you shop and try to find things, do

1 you?

2 PROSPECTIVE JUROR: No, but we have license
3 agreements.

4 THE COURT: But do you actually use it in your work?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: What do you do that you -- how do you use
7 it, I think, is what I'm trying to get at.

8 PROSPECTIVE JUROR: Retirement plans, allocating
9 contributions, and making distributions.

10 THE COURT: But you don't buy things with it?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you very much. Has anybody used
13 the Lawson Software S3 Supply Chain Management system or the M3
14 Supply Chain Management system, or the Fisher Scientific RIMS
15 system or the IBM Technical Viewer/2, also known as TV/2
16 system, the P.O. Writer system, the J-CON Writer system or
17 ePlus Procure(plus) or ePlus Contents(plus) systems? Anybody
18 ever use that, any of those? The answer is no.

19 PROSPECTIVE JUROR: I have a question.

20 THE COURT: Yes, ma'am, Ms. Downs.

21 PROSPECTIVE JUROR: I am so not into computers.

22 THE COURT: You're what?

23 PROSPECTIVE JUROR: I'm not into computers.

24 THE COURT: Me either.

25 PROSPECTIVE JUROR: I do use a computer at my work,

1 and it just dawned on me, one of the things that we sign on is
2 Lawson, and I don't know --

3 THE COURT: Do you know what it is?

4 PROSPECTIVE JUROR: I have no clue.

5 THE COURT: Do you ever use it?

6 PROSPECTIVE JUROR: I type my password in, and it's a
7 medical office I work in.

8 THE COURT: What do you do?

9 PROSPECTIVE JUROR: I'm an office assistant in a
10 doctor's office.

11 THE COURT: All right. So what do you do when you
12 are doing that?

13 PROSPECTIVE JUROR: For the medical records on a
14 patient, and I don't know if it's the same Lawson.

15 THE COURT: It may not be, but now we know as much as
16 you know which is all anybody can ask of you.

17 Yes, okay, stand up. Your name?

18 PROSPECTIVE JUROR: Jon Meyers.

19 THE COURT: Yes, Mr. Meyers.

20 PROSPECTIVE JUROR: When you were going through the
21 examples, you mentioned Fisher Scientific as one of the
22 examples.

23 THE COURT: Yes, just a minute. I'll read the name
24 exactly to you. Fisher Scientific R-I-M-S, RIMS.

25 PROSPECTIVE JUROR: All I can tell you is I have a

1 friend who sells for Fisher Scientific. I don't have a clue
2 about the specifics of that.

3 THE COURT: Would that affect you in giving a fair
4 trial here?

5 PROSPECTIVE JUROR: Not at all, sir.

6 THE COURT: Have you heard him say anything good,
7 bad, or indifferent about that system?

8 PROSPECTIVE JUROR: Just what she gets paid.

9 THE COURT: That's good then, I guess. All right,
10 has anybody here been educated in electronics or computer
11 programming? If the answer is yes, give me your name. All
12 right, back there in the back, your name, sir?

13 PROSPECTIVE JUROR: Eric Ellingson.

14 THE COURT: Mr. Ellingson, what kind of education
15 have you had in that area?

16 PROSPECTIVE JUROR: Well, I work for a pharmaceutical
17 company, and I work on systems, you know, some coding, you
18 know, to help in those systems.

19 THE COURT: How did you get trained in that?

20 PROSPECTIVE JUROR: Just through the vendor.

21 THE COURT: Okay. Who is the vendor?

22 PROSPECTIVE JUROR: LabWare based out of Delaware.

23 THE COURT: Is there anything about that that would
24 keep you from giving a fair trial here?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Anybody coming across? Yes, ma'am?

2 PROSPECTIVE JUROR: Kathleen Hribar. When I worked
3 for Cerner Corporation, I was trained in the coding and
4 programming of those systems.

5 THE COURT: Spell that name of that company.

6 PROSPECTIVE JUROR: C-e-r-n-e-r.

7 THE COURT: Did you actually do programming?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Of their system?

10 PROSPECTIVE JUROR: Of their system.

11 THE COURT: Is there anything about that that would
12 keep you from giving a fair trial to these parties?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Anybody else on that row. Next row? All
15 right, yes, sir, that's Mr. Murgatroyd; right?

16 PROSPECTIVE JUROR: Yes, sir. All DOD-related, but
17 27 years ion the Navy, I worked on communications systems,
18 weapons systems, those kinds of things. At that time, I wasn't
19 involved in any software writing or coding, but obviously, if
20 there was a software glitch, we'd communicate with the shore
21 folks who would tell us what the adjustments to make so we can
22 go forward.

23 Since retiring from the Navy in 2002, I've been
24 working as a senior systems engineer out at Dahlgren
25 laboratories in the development of the future weapons systems.

1 THE COURT: And you do programming?

2 PROSPECTIVE JUROR: I assist in programming.

3 THE COURT: Anything about that work that would keep
4 you from giving a fair trial to these parties?

5 PROSPECTIVE JUROR: No, Your Honor.

6 THE COURT: Yes, over there. That's Ms. Moore, is
7 it?

8 PROSPECTIVE JUROR: Yes. One of my jobs is with a
9 nonprofit, and I have been trained by them to manage and to
10 help program their case management software.

11 THE COURT: Is there anything about that situation
12 that would keep you from giving a fair trial to these parties?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you. Yes, sir, right there in the
15 front row. What is your name?

16 PROSPECTIVE JUROR: Brenton Carson.

17 THE COURT: Yes.

18 PROSPECTIVE JUROR: Engineering student for a couple
19 years at Virginia Commonwealth University, and I took a few
20 basic programming classes, but I don't remember too much about
21 them, and I don't use them now.

22 THE COURT: Anything about that situation in your
23 education that would keep you from giving a fair trial?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Anybody else on that row? Third row?

1 Yes, your name?

2 PROSPECTIVE JUROR: Carole Mitchell. I work with the
3 University of Richmond, and I help with the programming and the
4 setup of all the coding for our SunGard Banner system and our
5 Recruitment PLUS system.

6 THE COURT: Anything about that that would keep you
7 from giving a fair trial to these parties?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Thank you. Anybody else on that row?
10 Last row, anybody on the last row. Yes, Mr. Pollack?

11 PROSPECTIVE JUROR: Yes, sir. I'm a career
12 programmer analyst. My undergraduate degree is in mathematics
13 and computer science, and, of course, I've had training in many
14 different systems, both --

15 THE COURT: Have you had training in either ePlus or
16 Lawson?

17 PROSPECTIVE JUROR: Neither of those.

18 THE COURT: How about those that I asked you about
19 earlier? I guess you haven't had any training in those either.

20 PROSPECTIVE JUROR: Nothing in that list.

21 THE COURT: Thank you very much. Anything about that
22 situation, your training, your background that would keep you
23 from giving a fair trial to these parties?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: On down the road, back row, anybody?

1 Okay, anybody I missed?

2 Has anybody ever invented a process which uses
3 computer software and computer hardware components? That is,
4 have you invented it yourself? If you have, let me know. I'm
5 going down the front row, second row, third row, fourth row.
6 No inventors.

7 Whether you invented something or not, have you or
8 anybody in your family applied for a patent on anything? It
9 doesn't make any difference whether it was computer software or
10 anything. Have you applied for a patent? First row, nobody.
11 Second row? No. Yes. Ms. Hribar.

12 PROSPECTIVE JUROR: My brother-in-law holds several
13 patents as a chemical engineer. I couldn't tell you exactly
14 what they are for.

15 THE COURT: Has he said anything, good, bad, or
16 indifferent, about the process of obtaining patents or
17 enforcing patents?

18 PROSPECTIVE JUROR: Not at all.

19 THE COURT: You don't have any experience that would
20 keep you from giving a fair trial to these parties?

21 PROSPECTIVE JUROR: Correct.

22 THE COURT: Thank you. On down that row. Yes,
23 ma'am.

24 PROSPECTIVE JUROR: My father --

25 THE COURT: Your name?

1 PROSPECTIVE JUROR: Erika Powell.

2 THE COURT: Just a minute, please, ma'am.

3 THE CLERK: Number 49.

4 THE COURT: Ms. Powell, what?

5 PROSPECTIVE JUROR: My dad and his team have worked
6 on a couple of patents for Alcoa and Reynolds.

7 THE COURT: All right. Has he said anything about
8 the process?

9 PROSPECTIVE JUROR: Just a little bit, but nothing
10 that would interfere.

11 THE COURT: All right. You could be fair?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Even if he criticized the Patent Office?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Thank you. Anybody else? All right.

16 Has anybody been involved ever before in any way, as a
17 plaintiff, a defendant, or a witness in a patent infringement
18 case? If the answer is yes, let me know. We've gone through
19 all of the panel, and the answer is no.

20 How about have you ever been involved in a suit to
21 enforce intellectual property rights such as trademarks or
22 trade secrets or something of that nature that's not a patent,
23 whether you've been a plaintiff or defendant or witness? If
24 the answer is yes, let me know. All right. All the way
25 through, the answer is no.

1 Have you ever been involved as a plaintiff, a
2 defendant, or a witness in any civil case whatsoever, whether
3 personal injury case or contract case or lease, anything like
4 that? If the answer is yes, let me know. Your name?

5 PROSPECTIVE JUROR: John Apostle. Personal injury
6 case, Your Honor.

7 THE COURT: Anything about your experience that would
8 keep you from giving a fair trial to these parties?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you very much. Your name, sir?

11 PROSPECTIVE JUROR: Charles Asbury.

12 THE COURT: All right, sir.

13 PROSPECTIVE JUROR: I've been a witness in many cases
14 being a Virginia state trooper.

15 THE COURT: Were any of them civil cases?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Oh, yeah, sure. As in personal injury
18 cases, for example.

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Is there anything about your experience
21 in that situation, or any of those situations, that would keep
22 you from giving a fair trial here, Mr. Asbury?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Thank you. On down the road. Yes,
25 ma'am. That's Ms. Carrington.

1 PROSPECTIVE JUROR: Personal injury case.

2 THE COURT: Is there anything about that experience
3 that would keep you from giving a fair trial to these parties?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Thank you. On down the front row.

6 PROSPECTIVE JUROR: Jerry Dawson, civil case,
7 contract dispute.

8 THE COURT: All right. Is there anything about that
9 experience that would keep you from giving a fair trial?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, thank you. Second row,
12 anybody in the second row? Yes, ma'am.

13 PROSPECTIVE JUROR: Kathryn Horne. I was in a
14 personal injury case.

15 THE COURT: Ms. Horne, anything about that experience
16 that would give you a problem with giving these folks a fair
17 trial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you. On down the row, next row,
20 all the way across.

21 PROSPECTIVE JUROR: Joyce Marsh, personal injury.

22 THE COURT: All right, Ms. Marsh, anything about your
23 situation that would keep you from giving a fair trial to these
24 parties?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you. On down the back row. All
2 right, back row, anybody involved in a lawsuit as a plaintiff,
3 defendant, or witness?

4 Have you, any member of your family, or close friend
5 ever been employed by the U.S. Patent and Trademark Office,
6 also known as the PTO? If the answer is yes, let me hear from
7 you. Second row? Third row? Fourth row? Nobody. All right.

8 Has anybody ever been employed by or been an officer
9 or owned any stock in Fisher Scientific procurement? If the
10 answer is yes, stand and let me know. The answer is no.

11 Now, ladies and gentlemen, as I told you, this case
12 is expected to go perhaps three weeks. I need to know now
13 whether any of you have any special disability or problem that
14 would keep you from sitting as a fair and impartial juror in
15 this case for these people to decide these issues over that
16 period of time.

17 Now, I'm not going to go into all of the situations.
18 We have, for example, had people who have difficulty hearing,
19 and they just simply don't feel comfortable deciding cases on
20 the basis of things they've heard. We've also had people who
21 have had difficulty seeing in a case where there's a lot to be
22 looked at in the way of evidence, not necessarily read but
23 looked at and examined. They don't feel comfortable deciding
24 on the basis of what they see.

25 I'm not suggesting those things are disabilities, but

1 in their case they did, so that kind of thing is the kind of
2 thing I'm talking about. In addition, we've had people who are
3 on pain medication and they simply cannot function. They are
4 kind of fuzzy because of the pain medication. We've had other
5 people who actually are in pain and don't take medication, and
6 because they are in pain, they simply cannot focus their
7 attention on what people are saying and don't feel comfortable
8 making decisions.

9 We had one lady on one occasion who said she could
10 serve the first several days of the trial, but she didn't think
11 she could do the rest of it because she was going to have
12 open-heart surgery and wouldn't be back. There are different
13 reasons. I'm not going to try to go through all of them.
14 Don't you think for one minute that everybody in here doesn't
15 know that service for a significant period of time presents a
16 burden for everybody. We know that.

17 That's not the kind of burden I'm talking about. I'm
18 talking about some special disability or problem that would
19 keep you from giving these people a fair trial and being a fair
20 and impartial juror. So if you have anything like that, I'm
21 going to take it up here at the sidebar. Mr. Langford -- I
22 mean at the bench, and Mr. Langford will guide you up here.

23 The rest of you are going to be subjected to cruel
24 and unusual punishment because we're going to turn on the white
25 noise system that somebody decided was effective in keeping the

1 rest of you from hearing what's going on up here, but I think
2 mostly what it does is irritate you, so I'm sorry, because it
3 does irritate me. All right. Lawyers come up here please.

4 Whoever is handling the challenges, come on up. You
5 come here, you come here, and leave a place in the middle.
6 Come up please, ma'am. And then and y'all need to talk into
7 this thing. Here comes the noise. Here, speak into this.

8 (Discussion at sidebar as follows:)

9 PROSPECTIVE JUROR: Lisa Briscoe.

10 THE COURT: Okay, Ms. Briscoe, what is your
11 situation.

12 PROSPECTIVE JUROR: I have anxiety attacks and also
13 take Tramadol for my back which causes me to get sleepy
14 sometimes, drowsy.

15 THE COURT: Let me ask you this: Sometimes when I
16 take extra strength Tylenol, I want to fall up stand and move
17 around a little bit, I'm okay. Can you do that, or does taking
18 the medicine make you real drowsy?

19 PROSPECTIVE JUROR: Yes, this kind does. I can't
20 stand as much or sit too long. This is what I take like every
21 four hours or every six hours.

22 THE COURT: You do?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Anybody have any questions of Ms.
25 Briscoe?

1 MR. MERRITT: I just wanted to clarify what
2 medication she's taking.

3 THE COURT: Tramadol, T-r-a-m-a-d-o-l, and it does
4 affect you.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you. You may go back to your seat.
7 All right. Look at that line. I told you. Come on up. Wait
8 just a minute. All right, that is Ms. Downs; right? What is
9 your situation?

10 PROSPECTIVE JUROR: Well, I'm afraid I'm not going to
11 be very partial to anything in the court system. My son is in
12 prison, and we just had a hearing for a reconsideration of his
13 sentencing up in Maryland, and I just -- and it was turned
14 down, and all this was in December. It's just left me very
15 unfair towards the court system.

16 THE COURT: Now, that was in Maryland; it wasn't in
17 the federal court?

18 PROSPECTIVE JUROR: No, it was not.

19 THE COURT: And it didn't involve patents.

20 PROSPECTIVE JUROR: No, it did not.

21 THE COURT: It involved criminal law.

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Do you think you could put all that aside
24 and decide this case, because what you're really deciding is
25 not the court. You are deciding the rights between ePlus and

1 Lawson, not anything to do with the court. Do you think you
2 could be fair?

3 PROSPECTIVE JUROR: I would certainly try.

4 THE COURT: Yes, I know, but could you, because you
5 have to say -- in order for them to be comfortable, they have
6 to be comfortable knowing either you could or couldn't, and
7 it's okay if you can't, but if you can, let us know. If you
8 can't, you let us know, too.

9 PROSPECTIVE JUROR: Yes, I will.

10 THE COURT: You can? All right, okay. Thank you.
11 Okay. Your name?

12 PROSPECTIVE JUROR: Erika Powell.

13 THE COURT: All right, Ms. Powell, what is your
14 situation?

15 PROSPECTIVE JUROR: I don't know if it will be an
16 issue, but I have to go back to school on the 15th.

17 THE COURT: Where do you go to school?

18 PROSPECTIVE JUROR: UVa.

19 THE COURT: You all don't go to class up there
20 anyway, do you? Anybody have any questions for Ms. Powell?

21 MR. McDONALD: No, sir.

22 MR. MERRITT: No, sir.

23 PROSPECTIVE JUROR: All right, thank you.

24 THE COURT: All right. This lady. What is your
25 name?

1 PROSPECTIVE JUROR: Monica Redwood.

2 THE COURT: Okay, Ms. Redwood, what is your
3 situation.

4 PROSPECTIVE JUROR: I have scheduled Rituxan
5 infusions coming up for rheumatoid arthritis.

6 THE COURT: You have scheduled what?

7 PROSPECTIVE JUROR: Rituxan infusions.

8 THE COURT: What does that mean?

9 PROSPECTIVE JUROR: It's for treatment for rheumatoid
10 arthritis. It's IV drugs. It takes about six hours.

11 THE COURT: Do you know when it's scheduled?

12 PROSPECTIVE JUROR: Tomorrow.

13 THE COURT: Now, is that something you have to have a
14 regular schedule, or could it be rescheduled for next Monday,
15 January 10th?

16 PROSPECTIVE JUROR: It's a two-step process. I had
17 my first infusion two weeks ago.

18 THE COURT: So you need to take this one on this
19 date.

20 PROSPECTIVE JUROR: Right.

21 THE COURT: Anybody have any questions?

22 MR. McDONALD: No.

23 THE COURT: Thank you, ma'am. Okay. Your name is
24 what?

25 PROSPECTIVE JUROR: Brenton Carson.

1 THE COURT: All right, Mr. Carson, what is your
2 situation.

3 PROSPECTIVE JUROR: I'm just bringing this up. My
4 place of work is only paying me for seven days. So if it's
5 going to be three weeks, I'll be living on \$3 a day for two
6 weeks, I guess, but I can make do if actually necessary.

7 THE COURT: Would the fact that you're not getting
8 paid keep you from giving a fair trial at this point? Where do
9 you work?

10 PROSPECTIVE JUROR: I work at the Richmond SPCA.

11 THE COURT: And Ms. Starr is going -- have you asked
12 her? She's a lawyer. I can't believe she wouldn't pay.

13 PROSPECTIVE JUROR: I know, right. I have the jury
14 duty written out, and in the handbook it says seven days.

15 THE COURT: Have you asked them?

16 PROSPECTIVE JUROR: I haven't, because I wasn't
17 really thinking that it would last that long.

18 THE COURT: Well, we didn't tell you.

19 PROSPECTIVE JUROR: Right, but, I mean, if she is
20 willing to pay, or -- I mean, you know, I could make do if
21 absolutely necessary. It's not going to make me biased --

22 THE COURT: Living on \$3 a day is kind of hard.

23 PROSPECTIVE JUROR: Right, it is tough.

24 THE COURT: Anybody have any questions?

25 MR. MERRITT: No, sir.

1 THE COURT: Okay, Mr. Carson.

2 PROSPECTIVE JUROR: I appreciate it.

3 THE COURT: All right, next. I know a lot of you
4 have problems, but just remember the jury system requires your
5 service, so we are not going to be but so understanding. Yes,
6 Ms. Boyd, what is your situation?

7 PROSPECTIVE JUROR: I have a mentally challenged
8 sister that lives with me, and I am her caregiver, and she has
9 doctors' appointments for the next three weeks that -- she
10 doesn't take good to strangers, and I have no control.

11 THE COURT: Is there anybody else who can take her?

12 PROSPECTIVE JUROR: I left her with a friend this
13 morning, and it's not a good -- she doesn't do well with
14 strangers or different people. She never has.

15 THE COURT: Okay. Thank you.

16 PROSPECTIVE JUROR: Thank you.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: Peggy Carrington.

19 THE COURT: Yes, Ms. Carrington.

20 PROSPECTIVE JUROR: I work for a cardiologist. It
21 would be a great hardship for me to be away from our practice
22 for three weeks.

23 THE COURT: What do you do there?

24 PROSPECTIVE JUROR: I'm a nurse.

25 THE COURT: Well, if you were called, required to

1 serve, would you be resentful and not be able to give a fair
2 trial?

3 PROSPECTIVE JUROR: No, sir, I wouldn't be resentful.

4 THE COURT: And you'd be able to give a fair trial
5 even if you're required to serve?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Okay, thank you.

8 PROSPECTIVE JUROR: Good morning.

9 THE COURT: Your name?

10 PROSPECTIVE JUROR: Kevin Lewis, Sr. The only
11 problem I have is that I tend to lose interest, not pay
12 attention. I work out in the field. I'm the type of person
13 that works out in the field. I do maintenance work, and I'm
14 constantly moving. For me to sit in one place, I would lose
15 interest. My mind would just flare up into space, and I feel
16 that that would cause me not to be able to judge this case the
17 correct way, because I don't want to hurt anything.

18 THE COURT: Anybody have any questions?

19 MR. MERRITT: No, sir.

20 MR. McDONALD: No.

21 THE COURT: Thank you. Yes, ma'am. Your name?

22 PROSPECTIVE JUROR: Denise Robinson.

23 THE COURT: Okay, Ms. Robinson, let me get to you.

24 THE CLERK: 53, Your Honor.

25 MR. MERRITT: 54, I believe.

1 THE COURT: All right, Ms. Robinson.

2 PROSPECTIVE JUROR: I will be beginning classes at
3 Virginia Commonwealth January 18th.

4 THE COURT: All right, anybody have any questions?

5 MR. MERRITT: No, sir.

6 THE COURT: All right, go ahead. Thank you.

7 All right, come up and speak into this little black
8 thing here. Your name?

9 PROSPECTIVE JUROR: Carole Mitchell. I am under
10 doctor's care. I'm doing physical therapy twice a week for my
11 right knee and my left achilles.

12 THE COURT: When does that end?

13 PROSPECTIVE JUROR: When it gets well. We're not
14 there.

15 THE COURT: When did it start?

16 PROSPECTIVE JUROR: In November.

17 THE COURT: Do they have hours in the morning and
18 late in the evening?

19 PROSPECTIVE JUROR: They have hours until 5:00.

20 THE COURT: They don't have evening hours or early
21 morning?

22 PROSPECTIVE JUROR: Not that I know of. I've been
23 going during work or before work?

24 THE COURT: Where is it?

25 PROSPECTIVE JUROR: Henrico Doctors' Parham.

1 THE COURT: They usually start about 7:30.

2 PROSPECTIVE JUROR: They start at 7:30.

3 THE COURT: Could you do that and go get your
4 physical therapy morning in the morning?

5 PROSPECTIVE JUROR: I could, but if I'm going to be
6 here for three weeks, I'm going to have to go to work before I
7 come, and I'm going to have to go to work after. I work in the
8 admissions office at the University of Richmond. Our deadline
9 is January 15th.

10 THE COURT: Well, if you had to serve, would you be
11 resentful and unable to be fair?

12 PROSPECTIVE JUROR: I could be fair. I could be fair
13 absolutely.

14 THE COURT: All right, thank you very much. What is
15 your name?

16 PROSPECTIVE JUROR: Desiree Roberts.

17 THE COURT: Okay, Ms. Roberts, what's your situation?
18 You are a teacher.

19 PROSPECTIVE JUROR: Yes, I'm a teacher. I teach
20 four-year-olds. We're getting ready for a standardized test
21 for them. I am also in the process of adopting a child that I
22 have a meeting for, and I have to take a test on the 18th for
23 my degree. So I think that all of this right at the time, I
24 don't know that I would be impartial to coming to trial every
25 day for two weeks.

1 THE COURT: What degree are you getting?

2 PROSPECTIVE JUROR: It is in literacy and culture.

3 I'll be a reading specialist.

4 THE COURT: You are taking a test what?

5 PROSPECTIVE JUROR: A standardized test on the 18th,
6 January 18th.

7 THE COURT: For you?

8 PROSPECTIVE JUROR: For me, yes.

9 THE COURT: What is the adoption? I didn't
10 understand that.

11 PROSPECTIVE JUROR: I am in the process of adopting a
12 child.

13 THE COURT: What does that have to do with being
14 here?

15 PROSPECTIVE JUROR: We are scheduling meetings with
16 the families.

17 THE COURT: But you can schedule those around --

18 PROSPECTIVE JUROR: I could.

19 THE COURT: And these four-years-old --

20 PROSPECTIVE JUROR: I'm a teacher.

21 THE COURT: There's other teachers, aren't there?

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: They help out with you, don't you have a
24 teacher's aid and all that?

25 PROSPECTIVE JUROR: I do, yes, I do.

1 THE COURT: How about this test on the 18th, can you
2 reschedule that?

3 PROSPECTIVE JUROR: I guess if I told them I had to
4 go to court, I could.

5 THE COURT: Would doing all that or having to do any
6 of that, put off these meetings or reschedule a test, would
7 that keep you in any way from giving a fair trial to these
8 parties?

9 PROSPECTIVE JUROR: I would do the best that I could.

10 THE COURT: I know that, and I don't have any
11 question about it, but would you be sitting there saying I
12 don't like these people because I have to be --

13 PROSPECTIVE JUROR: Oh, no, I wouldn't say that.

14 THE COURT: Or I can't be fair because I'm going to
15 be mad about the whole thing?

16 PROSPECTIVE JUROR: No, I wouldn't say that.

17 THE COURT: What would you think then?

18 PROSPECTIVE JUROR: Well, you know what I would be
19 thinking? I'm really concerned about my four-year-olds because
20 we're getting -- they are getting ready to take a test
21 themselves on how much they have learned from September until
22 now. I would be concerned --

23 THE COURT: Does that affect your performance, grade
24 as performance as a teacher if they don't do well?

25 PROSPECTIVE JUROR: Yes. I would think it has

1 something to do with it, yes.

2 THE COURT: Anybody have any questions?

3 MR. MERRITT: No, sir.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Your name is what ma'am?

6 PROSPECTIVE JUROR: Flora Robinson.

7 THE COURT: Okay, Ms. Robinson, what is your
8 situation?

9 PROSPECTIVE JUROR: I'm willing to serve. I have
10 some health issues.

11 THE COURT: What problems did you want to tell me
12 about?

13 PROSPECTIVE JUROR: First of all, I have triple
14 bypass.

15 THE COURT: When did you have it?

16 PROSPECTIVE JUROR: 14 years ago.

17 THE COURT: Are you doing okay with it?

18 PROSPECTIVE JUROR: I'm doing okay.

19 THE COURT: And then you had what other kind of
20 problems?

21 PROSPECTIVE JUROR: Kidney problem, diabetes, high
22 blood pressure. I take 11 medicines a day plus two as needed,
23 and I have a doctor's appointment on the 11th and the 18th. As
24 I said, I'm willing, but it may be a concentration problem due
25 to the unusual case.

1 THE COURT: And your current medical situation is
2 dealing with diabetes, is it?

3 PROSPECTIVE JUROR: Diabetes.

4 THE COURT: Is it type two or type one?

5 PROSPECTIVE JUROR: Type two.

6 THE COURT: And you take medicine?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And these doctors' appointments, can they
9 be rescheduled?

10 PROSPECTIVE JUROR: They can, yes.

11 THE COURT: If you had to serve, would you be able to
12 give a fair trial knowing that all these -- that you're going
13 to have to reschedule your doctors' appointments?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Is there anything else you need to let me
16 know? You said you had bypass surgery. Is your heart giving
17 you any problems?

18 PROSPECTIVE JUROR: I see my heart doctor on the
19 18th. I see my kidney doctor on the 11th. So all of it is
20 affecting different organs.

21 THE COURT: So do you have any problems with your
22 heart right now?

23 PROSPECTIVE JUROR: Just -- no problem. I take the
24 medicine and see him every, you know...

25 THE COURT: As long as you take the medicine, you are

1 okay?

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Anybody have any questions?

4 MR. MERRITT: Ms. Robinson, do you have any medical
5 requirements or medication requirements that would cause you to
6 need to take a break after any certain period of time?

7 PROSPECTIVE JUROR: No. I just take medicine
8 different times during the day.

9 THE COURT: All right. Thank you. Yes, sir, what is
10 your name?

11 PROSPECTIVE JUROR: Gardner Divers.

12 THE COURT: All right, Mr. Divers.

13 PROSPECTIVE JUROR: I have no problems serving. I
14 didn't know how long we'd be sitting at a time.

15 THE COURT: Sitting down?

16 PROSPECTIVE JUROR: Sitting down. I have restless
17 leg syndrome, and I get very uncomfortable after sitting for
18 awhile.

19 THE COURT: Any time you want to stand up, we'll put
20 you in a place where you can stand up if you want to. The
21 chief justice of the United States had back problems. He used
22 to stand up, hear cases standing up, so I figure we can do that
23 for you.

24 We'll take a break in the morning, and you can walk
25 around a little bit. I can put a chair right over here or

1 right down at the end if you're not comfortable in one of the
2 jury chairs, and any time you need to stand up, you can stand
3 up. I will put you in the back row so you wouldn't block
4 anybody else's view or on the end. Would that be okay?

5 PROSPECTIVE JUROR: Yes, sir. You say there are
6 breaks for the restroom?

7 THE COURT: A break in the morning, and break for
8 lunch, and then break in the afternoon. The general rule is
9 that if anybody needs to have a comfort break, they raise their
10 hand and we go.

11 PROSPECTIVE JUROR: May I ask one other question?
12 You asked a question earlier, and I didn't think about it. You
13 had asked a question about being part of a court case.

14 THE COURT: Yes, as a plaintiff or a defendant or a
15 witness.

16 PROSPECTIVE JUROR: My company I work for, I would
17 take people to court for nonpayment of their loans.

18 THE COURT: Did you have to testify?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Anything about that experience that would
21 keep you from giving a fair trial here?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Anybody have any questions of Mr. Divers?

24 MR. McDONALD: No, sir.

25 MR. MERRITT: No, sir.

1 PROSPECTIVE JUROR: Thank you.

2 THE COURT: Thank you. Yes, ma'am, your name is
3 what?

4 PROSPECTIVE JUROR: Constance Campbell. I wasn't
5 going to say anything, but I was sitting there thinking, I do
6 have a bit of attention deficit disorder, and I do take
7 Ritalin® for that.

8 THE COURT: When you take it, does that help you?

9 PROSPECTIVE JUROR: Oh, yeah.

10 THE COURT: Can you do all right with it?

11 PROSPECTIVE JUROR: Oh, sure.

12 THE COURT: Do you feel like you would be able to pay
13 attention?

14 PROSPECTIVE JUROR: I think so. I would really like
15 to do it, actually.

16 THE COURT: You say, I think so. I need to be
17 relatively sure, and I know you would try to do it, but have
18 you had to do protracted focusing on issues before and you take
19 your medicine and you do okay with it?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: So you feel like you could sit fairly and
22 impartially here, and even if you had to stay off and on for
23 three weeks, if you had adequate breaks, could go home at night
24 and sleep and rest, could you be fair?

25 PROSPECTIVE JUROR: Yeah. I mean, you usually get

1 out of here at 5:00?

2 THE COURT: Between 5:00 and 6:00. Where do you live
3 here?

4 PROSPECTIVE JUROR: Henrico. Near West End.

5 THE COURT: Not too far.

6 PROSPECTIVE JUROR: I think I'd be all right. I just
7 thought I'd mentioned it.

8 THE COURT: Well, thank you. I told you, that's what
9 I want to know. Anybody have any questions?

10 MR. MERRITT: No, sir.

11 MR. McDONALD: No, sir.

12 THE COURT: Okay, thanks. All right, let's go down
13 them one by one. Ms. Boyd, she has the mentally challenged
14 sister who doesn't do well with other people. I'm inclined to
15 believe that's cause. Do you agree or not?

16 MR. MERRITT: I agree.

17 MR. McDONALD: I agree.

18 THE COURT: So that's number six. Ms. Campbell, I
19 think she's fine, the one who was just up her.

20 MR. McDONALD: You skipped over Ms. Briscoe. She was
21 the one --

22 THE COURT: Oh, thank you very much. She has the
23 anxiety problems and takes medicine that makes her drowsy. I'm
24 inclined -- she was pretty adamant that she can't function, so
25 I had think we recuse her, number seven. Do you all agree?

1 MR. McDONALD: I agree, Your Honor.

2 MR. MERRITT: Yes, sir.

3 THE COURT: Ms. Campbell, the one who was just up
4 here, I think is okay. Do you agree?

5 MR. MERRITT: Yes, sir.

6 MR. McDONALD: I agree.

7 THE COURT: Mr. Carrington who is a cardiologist
8 nurse -- I'm not -- I don't think that's cause. Cardiologists
9 have plenty of people they can call on. It's a hardship, but
10 that's all it is, and I'm not inclined to find that's cause.
11 Anybody disagree with that?

12 MR. MERRITT: No, sir.

13 MR. McDONALD: I don't disagree with that.

14 THE COURT: Mr. Carson, the guy who works for the
15 SPCA, \$3 a day is hard to live on. What do you think?

16 MR. MERRITT: I'd be inclined to let him go.

17 THE COURT: What do you think?

18 MR. McDONALD: I'm on the fence on that one as well,
19 Your Honor. I would be okay with letting him go.

20 THE COURT: I think, as a general proposition, he
21 might not be able to focus is what I'm concerned about. I
22 think he's not unwilling to do it, but I think his mind would
23 be on other things.

24 All right, then that brings us to Mr. Divers. He's
25 okay, number 20. Ms. Downs, she's the one who had the child

1 who was in Maryland and didn't like the system, and I tried to
2 rehabilitate her, and she finally said that she was okay, but I
3 fear maybe that was in response to the black robe.

4 MR. McDONALD: And the relentless cross-examination.

5 THE COURT: And relentless cross-examination.

6 MR. MERRITT: It was a reluctant okay at best.

7 THE COURT: I don't think -- I think she really is
8 bitter about it, and she could take it out on anybody depending
9 on what happens. I don't think it's safe. All right, so
10 that's number 21.

11 And Mr. Lewis, I will have to tell you that in all of
12 the days that I have been trying cases and on the bench, I have
13 never heard anybody use the float-off, but that guy was for
14 real. He is going to float off. I think he's entitled to
15 cause. Don't you all?

16 MR. McDONALD: I think that was one of the best
17 speeches he ever gave.

18 THE COURT: Or at least the longest.

19 MR. MERRITT: Very effective.

20 MR. McDONALD: I would agree with that.

21 THE CLERK: 40, Your Honor.

22 THE COURT: 40, Ms. Mitchell, she is the one that has
23 to go for therapy twice a week, day care, and all that. I mean
24 doctors' care, and she's at the admissions department at the
25 University of Richmond. What do you all think about her?

1 She'd have to get up and get her physical therapy in the
2 morning before she got here, and she said she'd have to go to
3 work before.

4 MR. MERRITT: I'd be concerned about her. She's
5 working before, she's working after, and she's doing physical
6 therapy two days a week during.

7 THE COURT: You all believe she's entitled to cause?
8 Both of you?

9 MR. MERRITT: We do.

10 MR. McDONALD: We'd agree with that.

11 THE COURT: Okay, and then Powell, 49, she starts
12 school on the 15th, and you all agree that that's cause?

13 MR. MERRITT: Yes.

14 MR. McDONALD: I would agree with that.

15 THE COURT: And the lady, number 51, who is getting a
16 doctors -- she has to have that infusion tomorrow, and I don't
17 want to stop the trial.

18 MR. MERRITT: My father went through that. I'm quite
19 familiar with it.

20 THE COURT: Those are times that you can't put those
21 off.

22 MR. McDONALD: I would agree with that.

23 THE COURT: Ms. Roberts, she's the lady who is the
24 teacher and going through an adoption and is taking her own
25 test, and she said she thought the combination of things,

1 combination of things might make it hard for her to be fair. I
2 think she tried to say she could be fair at the end, and she
3 could reschedule her degree test, but she's worried about
4 four-year-olds. She raised that two or three times. What do
5 you say?

6 MR. MERRITT: I think the biggest concern I heard her
7 mention is whether she'd be attentive because she was --

8 THE COURT: That's what she said.

9 MR. McDONALD: Her concern about the four-year-olds
10 and lack of focus is my concern.

11 THE COURT: I think you're right. And Ms. Flora
12 Robinson, she was the lady who has got doctors' appointments on
13 the 11th and 18th, but she is the one who had the heart problem
14 sometime ago but has been okay, and she takes diabetes
15 medication. What do you all say? She would have to change her
16 appointments. It's a routine cardiology appointment, but what
17 do you all say?

18 MR. McDONALD: She mentioned diabetes issues as well
19 as I think some kidney treatment.

20 THE COURT: Medication. Anybody who has diabetes has
21 some kidney prospects, and she is apparently taking medication
22 for both, so what do you think? I think she'd like to do it
23 but --

24 MR. McDONALD: I think she's trying her best, but I
25 think it's going to be an impediment to her ability to serve.

1 THE COURT: Do you?

2 MR. MERRITT: I think that's correct.

3 THE COURT: I agree. And Ms. Robinson, 54, is going
4 to start school on the 18th as a student. Do you agree she's
5 out?

6 MR. McDONALD: Yes, sir.

7 THE COURT: And that's it.

8 MR. MERRITT: Judge, we had one more matter --

9 THE CLERK: Constance Campbell.

10 THE COURT: She's okay. She said she'd be okay, and
11 they agreed on her.

12 THE CLERK: Okay.

13 THE COURT: Now, do you all have any challenges for
14 cause other than what I just mentioned?

15 MR. MERRITT: Your Honor, I want to make a disclosure
16 and mention a couple of others. By way of disclosure, juror
17 number three, John Apostle, is a lawyer at Genworth, although I
18 don't know if it affects his ability to be fair at all.

19 THE COURT: Is that your client?

20 MR. MERRITT: I have several partners who when we
21 circulated these names identified John Apostle as someone they
22 knew. Ford Stephens, who is known to you, had lunch with him
23 just a couple weeks ago.

24 THE COURT: Mr. Apostle, would you come up here
25 please, sir.

1 Mr. Apostle, apparently you are a lawyer with
2 Genworth.

3 PROSPECTIVE JUROR: Correct. I'm a chief compliance
4 officer, sir.

5 THE COURT: And you know lawyers in Christian &
6 Barton?

7 THE WITNESS: I don't think -- I may. I can't tell
8 you.

9 MR. MERRITT: Gaines Tavenner.

10 PROSPECTIVE JUROR: I used to work with Gaines, yes.

11 MR. MERRITT: Ford Stephens.

12 PROSPECTIVE JUROR: I have been at a seminar with
13 Ford Stephens.

14 THE COURT: Would the fact that you know those
15 people, would that keep you in any way from giving a fair trial
16 to these parties?

17 PROSPECTIVE JUROR: No, sir, Your Honor.

18 THE COURT: You worked with Tavenner where?

19 PROSPECTIVE JUROR: Gaines Tavenner and I were both
20 corporate counsel at Signet Bank in 1993/'94. I left Signet
21 late '94.

22 THE COURT: Okay. Any questions?

23 MR. MERRITT: No, sir.

24 THE COURT: Thank you. Number 33, Mr. Kiersarsky.
25 Mr. Kiersarsky. You told Mr. Langford you know some of the

1 lawyers or think you do?

2 PROSPECTIVE JUROR: Well, I worked in the insurance
3 claims industry for 21 years.

4 THE COURT: Are you an adjuster?

5 PROSPECTIVE JUROR: Yes. I'm a supervisor now.

6 THE COURT: What company?

7 PROSPECTIVE JUROR: Hanover Insurance, Ohio Casualty,
8 and National Grange.

9 THE COURT: And do you know any of these lawyers?

10 PROSPECTIVE JUROR: No, but we've retained -- my
11 company has used Troutman Sanders.

12 THE COURT: Would that keep you from giving a fair
13 trial to this parties?

14 PROSPECTIVE JUROR: No, I don't handle Virginia. I
15 just wanted to let you know.

16 THE COURT: I'm glad to know it. Anybody have any
17 questions?

18 MR. MERRITT: No, sir.

19 THE COURT: Thank you, Mr. Kiersarsky. Ms.
20 Carrington.

21 PROSPECTIVE JUROR: I'm sorry, Your Honor.

22 THE COURT: That's all right. I told you, I'd rather
23 know later --

24 PROSPECTIVE JUROR: I remembered that my son-in-law
25 was previously employed by Christian & Barton.

1 THE COURT: Who is your son-in-law?

2 PROSPECTIVE JUROR: Brian Boggs. He no longer is
3 there. He's with Dominion Power now.

4 THE COURT: Is there anything about his being there
5 or the fact that he left there that would keep you from giving
6 a fair trial to the parties?

7 PROSPECTIVE JUROR: No, sir. I just needed to let
8 you know.

9 THE COURT: I know that, and I told you I'd rather
10 have later knowledge than not. That's fine. Anybody have any
11 questions?

12 MR. MERRITT: No, sir.

13 THE COURT: Thank you, Ms. Carrington. We've got one
14 more.

15 PROSPECTIVE JUROR: Jon Meyers.

16 THE COURT: Yes, Mr. Meyers, what is your situation?

17 PROSPECTIVE JUROR: I'm just asking. Mine's a
18 business issue, but if this thing goes three or four weeks --

19 THE COURT: It could go three, it could go four, but
20 I doubt it.

21 PROSPECTIVE JUROR: I was going to wait to see if you
22 pulled me or not, but my issue is I'm a sole proprietor. I
23 have a presentation on the 24th of January for a new account,
24 and --

25 THE COURT: You'd probably have to move that.

1 PROSPECTIVE JUROR: If I move it, I'd lose the deal.
2 I've got no choice. I'm competing against two other companies,
3 and that's the day the board makes the decision.

4 THE COURT: Would that keep you from giving a fair
5 trial here today if you were to do that?

6 PROSPECTIVE JUROR: I'm sorry?

7 THE COURT: Would that keep you from giving a fair
8 trial --

9 PROSPECTIVE JUROR: Begrudging, you mean? No. It's
10 just I'd lose the deal.

11 THE COURT: You are a sole proprietor in what area?

12 PROSPECTIVE JUROR: I'm in financial services. I'm
13 competing for a contract, and I've got no one else I can give
14 it to to do.

15 THE COURT: It says you were a sales manager here.

16 PROSPECTIVE JUROR: Same difference. Of a financial
17 services group. Independent contractor for them.

18 THE COURT: Independent contractor?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Anybody have any questions?

21 MR. MERRITT: I just want to confirm the date of that
22 presentation.

23 PROSPECTIVE JUROR: Monday, the 24th. I think that's
24 a Monday.

25 THE COURT: That's right. Thank you very much. That

1 would be right near the end of the trial.

2 MR. MERRITT: I would think.

3 MR. McDONALD: I think we're trying to be done before
4 that.

5 THE COURT: The other thing is, if he's chosen, we
6 will not go on the 24th given that he said he would lose the
7 whole deal, because I think losing a deal is reason to excuse
8 somebody. So we wouldn't go on that date if we're not
9 finished. Okay, is that all right with you?

10 MR. McDONALD: Yes.

11 THE COURT: Otherwise we're okay with it.

12 MR. MERRITT: Yes. We did have one other one we
13 wanted to raise as a possible strike for cause. Number 48,
14 Pollack.

15 THE COURT: Mr. Pollack, he is the programmer
16 analyst.

17 MR. MERRITT: I believe he mentioned in years past he
18 had worked for IBM. Now, we may have misheard that.

19 THE COURT: He was an IBM programmer in college.

20 MR. MERRITT: Given the TV/2 connection here and the
21 time during which he worked for IBM, I don't know if there's a
22 connection there or not.

23 THE COURT: Mr. Pollack, could you come up here,
24 please.

25 He said when I read that list that he never worked

1 with them. Come on up, Mr. Pollack. Speak into this.

2 PROSPECTIVE JUROR: Thank you. How do you do?

3 THE COURT: You were a programmer with IBM when?

4 PROSPECTIVE JUROR: That was just two summers in
5 college, so the summer of '69, and summer of '70.

6 THE COURT: Did it involve -- what is the name of the
7 system?

8 MR. MERRITT: TV/2.

9 PROSPECTIVE JUROR: I don't believe any of these
10 things existed back then. I was a summer programmer doing
11 whatever they had summer programmers doing, and they certainly
12 didn't sell anything I did.

13 THE COURT: Did you work with anything from TV/2?

14 PROSPECTIVE JUROR: There was no such thing.

15 THE COURT: Okay, no such thing. Anybody have any
16 questions?

17 MR. McDONALD: No.

18 THE COURT: Thank you, Mr. Pollack. Anybody else you
19 all want to challenge for cause?

20 MR. McDONALD: If we go back to Mr. Apostle, with
21 respect to John Apostle, juror number three, who, with Genworth
22 Financial, had some connections with Christian & Barton, we
23 would ask he be excused for cause.

24 THE COURT: If I recall correctly, he worked with a
25 guy named Gaines Tavenner who is now with you?

1 MR. MERRITT: Who is now a partner.

2 THE COURT: Put at the time he worked with Mr.
3 Tavenner, it was 1993 and '94, and they were both at the Signet
4 Bank which is -- your firm did not represent Signet Bank, did
5 it?

6 MR. MERRITT: In the dim past, it may have. It
7 hasn't recently.

8 THE COURT: Well, it did. It represented the
9 predecessor when Dick Catlett was over there, but that became
10 Signet Bank years after that.

11 MR. McDONALD: I do think he mentioned one other
12 person. He mentioned another name --

13 THE COURT: Ford Stephens who met him -- who is a
14 litigator at Christian & Barton, a partner there, I believe.

15 MR. MERRITT: He is a partner.

16 THE COURT: And he met him at a seminar, and he said
17 it wouldn't make any different. Have I got that right? Are
18 you challenging --

19 MR. McDONALD: There's more than one person he
20 mentioned that had a relationship with Christian & Barton. I'm
21 just trying to make sure we recall all of them.

22 MR. MERRITT: Gaines Tavenner and Ford Stephens.

23 THE COURT: Any challenge for cause?

24 MR. McDONALD: Yes.

25 THE COURT: You're challenging for cause?

1 MR. McDONALD: Yes, we're challenging for cause.

2 THE COURT: What do you say?

3 MR. MERRITT: Judge, I mean the connection is there.
4 That's why we disclosed it voluntarily.

5 THE COURT: Do you agree to a challenge for cause?

6 MR. MERRITT: We'll agree to it.

7 THE COURT: You do? Okay. He just wants to get rid
8 of a lawyer, I think. All right, is that it? Let's go.

9 Okay, now, you're going to have nine people, and
10 remember -- you know how it's done? You've been over it with
11 them?

12 THE CLERK: Yes, sir, Your Honor.

13 THE COURT: Mr. Langford, has the jury been given
14 sufficient time to have recesses?

15 COURT SECURITY OFFICER: They all went to the
16 bathroom.

17 THE COURT: Are you all okay?

18 MR. McDONALD: A little break for the bathroom, we'd
19 appreciate it, Your Honor.

20 THE COURT: Why don't we get them so we'll take --
21 can you get them a break and get them back in here, and we'll
22 take 15 minutes, I guess.

23 (Discussion off the record.)

24 THE COURT: All right, go ahead and have a seat, and
25 I'll talk to them.

1 (End of sidebar discussion.)

2 THE COURT: Ladies and gentlemen, the questioning has
3 now been completed, and we will complete the process of drawing
4 names by lot and then jury selection by the exercise of the
5 challenges, and that won't take long.

6 However, you all have all been in here a good while,
7 and in addition to that, the lawyers have and I have been in
8 here longer, and the Court staff, than you have, and so --
9 well, actually that's not right. That's in most cases that
10 right, but we've all been in here. We're going to take about a
11 15-minute break for a little recess, and then we'll get back to
12 the business of selecting the jury, and I expect that will be
13 finished by no later than 12:30.

14 So we'll take a 15-minute recess. Those of you who
15 need to use the restrooms facilities, there are some on other
16 floors as well as some here, so if you would do that, I would
17 appreciate it.

18 Mr. Langford, you all can have all of the restroom
19 facilities down that way. The lawyers, Mr. Neal is going to
20 show you where you go for now, just for the this time. Thank
21 you. We'll be in recess.

22

23 (Recess taken.)

24

25